Supreme Court, U.S.
FILED

06-785 OCT 20 2006

OFFICE OF THE CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

GERSH KORSINSKY- PETITIONER

vs.

MICROSOFT CORPORATION
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI

UNITED SRATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

GERSH KORSINSKY

BROOKLYN, NEW YORK, 11219

1-713-435-1107

QUESTIONS PRESENTED

If Patent Infringement legalization or securing to Inventors the exclusive Right to their respective Discoveries and Description Writings as Authors take away, or promote the Progress of Science by take away or confiscation the Inventions before Established expiration time, under imposed penalties or taxation nature grounds, which are Subjected to the policy direction of the Secretary of Commerce, can satisfy Article I, Section 8; Art.II,Sec.3 ,Sec.8; Amendment I; Amendment V and VII ; and Common laws.

If taking advantage of a inventor, which is an ordinary individual without any skill and experience in law and financial resources lacked, by imposing exclusive courts jurisdictions, USPTO approved lawyers, very complicated and fast changeable rules, requirements , laws, etc., caused that inventors acting prose; which activity is blatant in is actually intent and pernicious in is effect,; can satisfy multiple Constitutional provisions, Congress statutes ,Federal laws, etc.

If designing numbers of traps named "Patent maintenance substantial fee timely paying ", which take away patents or confiscate intellectual property from individuals; which is one from numbers of the designed that not experience many individuals be traps, such applying for a patent cost – prohibitive for most individual applicant and then they lose the patent and substantial fees paid for the patent, can satisfy Art. I, Sec.8; Art.II, Sec. 3, Sec.8; Amendment I, Amend.V , Amend. VII, and common laws

If USPTO activities are not an ordinary search for priority of an invention and registration as an intellectual property, but subjected to the policy direction of the Secretary of Commerce and under "Manual of patent Examining Procedure", subjected to inviting patent infringement or patent infringement legalization or confiscation inventions; and supply marked with free of charge inventions, to take away the intellectual property market from an individual inventor; generate same intellectual slavering activities nature; and generating income from keep substantial fees, paid by the mass inventors in its carry out policy fevering until the mass individual find out; can be considered inherently anti-competitive and injurious to the public without any need to determine if the USPTO activities has actually injured intellectual property market competition for be qualified under Per se Violations.

If infringement legalization or invention confiscation subjected to substantial fees for charges, surcharges, penalties, etc., can satisfy multiple constitutional provisions and federal common laws.

If prove "Unavoidable standard" for timely not paid patent maintenance substantial fees requires provides a large quantity of personal sensitive information, even making public, for ordinary officer of the Patent Office's discretionary decision regarding confiscation intellectual property can satisfy of the multiple constitutional provisions, Congresses Acts and federal common laws.

If legalization infringement or confiscation, for not timely paid patent maintenance substantial fees, with keeping, received from ordinary individual inventor, substantial fees for not commercialized invention; and without any governments contribution , can satisfy multiple constitutional provisions and common federal laws

If Whoever makes, offers, uses, offers to sell, or sells and PTO, responsible to determine whether are not patent infringement.

IF securing for limited times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries means only no one or nobody.

If imposed charges for interfering, subjected to the policy direction USPTO, with the original inventor's of disclosures a description of the invention defined as an unique art author's writing. Instead simple search of the priority of he invention recording as its, makes not affordable for an ordinary individual development of the existing inventions and filing new application for a patent; and required to choose between loosing inventions and other activities, even life importance maters, can satisfy multiple constitutional provisions and federal laws.

If a patent is a clear record absolute title to an invention by constitutional securing grantor for established time.

If a combination or confederacy between exclusive

Judicial activism, including imposing PTO approved lawyer for representing inventors which caused inventors acting prose, and political legislation power for the purpose of committing, by their joint efforts to overcome multiple constitutional provisions, Congressional Acts, federal common laws, for legalization patent infringement or confiscation intellectual properties, which done by the concerted action of them are lawful.

Patent reinstatement, for timely not paid of the maintenance substantial fee, subjected to intrude on inventor's life, which believes in the right of privacy will be enraged and use tawdry tactics to denying because inventor's acting prose disadvantage, is a questionable matter.

Because inventor's activities are without absolute any government contribution, except registration priority, the substantial fees charges, specific patent maintenance fees, the fees charges nature are questionable.

Because the inventor receives nothing in exchange, even substantial paid fees for the patent not refundable, the right to put public in possession of the invention is questionable.

If a Patent securing for limited times, such for Pat. NO. 4,736,447 for 17 years, to inventors the exclusive Right to their respective Writings and discoveries contains the union of all the elements which constitute full independent and fee ownership like a title or a deed or a conveyance of realty; a writing by Constitutional grantor, whereby title to realty is transferred from inventor's self created to public, after limited times(after 17 years), to satisfy constitutional Art. I, Sec8, Amendment V, ,and multiple constitutional provisions and federal common laws.

If legalization Infringement or confiscation intellectual property or securing right to inventor subjected to watch-dog conditions, such no recovery shall be had for any infringement committed more than six years prior to the filing complaints and which subjected to USPTO Final decision; in action for ordinary inventor which not full time occupied with invention and acting prose, can satisfy of the Art. I, Sec. 8,; Amendment V; and other multiple constitutional provisions and common laws.

If legalization infringement or confiscation intellectual property from Congress approval Activities, which raises constitutional issues, for automatically for court obligated review.

If appropriately can be raised constitutional issues, in a patent infringement action; against public company, like Microsoft, a private entity.

If summary judgment of non infringement is appropriate where there are before USPTO Final decision for patent reinstatement, and multiple constitutional and federal common Issues, and linking to litigating these Issues in a separate action directly, challenging the PTO officer's under named the Director's denial of reinstatement, and by the court acknowledged that prose's papers must be read liberally.

PARTIES

[x] All parties appear in the caption of the case on the cover page.

DEFENDANT'S FED. R. CIV. P, 7.1 STATEMENT

Defendant Microsoft Corporation' ("Microsoft") makes this statement pursuant to Fed. R. Civ. P. 7.1. The undersigned, attorneys certify that (1) Microsoft is a publicly traded corporation, (2) Microsoft has'ho corporate parents, and (3) there is no publicly held corporation that owns 10% or more of Microsoft's stock.

Dated: August 30,2004

Steven A. Zalesin (SZ0901)
Chad J. Peterman (CP4526)
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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is

has been designated for publication but is not yet reported; or,[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and has been designated for publication but is not yet reported; or, [X] is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was August 16/2006

No petition for rehearing was timely filed in my case.

STATMENTOF THE CASE

On April 5, 1988 was issued US Pat. 7[illegible]6,447 and expired on April 7, 1992 because not paid timely maintenance fee.

On April 28, 2004 was filed a petition requesting reinstatement of the patent on the ground that he had never received fee reminder which was denied on May 17, 2004.

On September 8, 2004 was submitted a request for reconsideration action arguing, that inventors wife not allow him to do so pay the fee.

PTO requested further large values of his wife and him documented personal information, which violated Paperwork Reduction Act, Privacy Act, Administrative Procedure Act, IRS Code and Federal Question.

And reasonable as possible value of information was provided with a letter on October 26, 2004

On June 29, 2004 was filed an action against Microsoft alleging Infringement of US Patent No. 4,736,447, which was find out.

The court treated the Microsoft's motion as one for summary judgment.

On February 2005 was submitted affidavit of Mr. David W. R. Brown (511 pages) with proof of the 91% of the individual inventors lose their's patents from timely not paid first 3,5 years maintenance fees and other affidavits and other materials in support of the present case, according to the court's instructions, which was ignored by the court .

On March 31, 2005 the district court granted summary judgment of non infringement in favor Microsoft.

On May 11, 2005 was filed an appeal with the Second Circuit, which transferred the appeal to the Federal Circuit.

REASONS FOR GRANTING THE PETITION

To : stop ignoring of the US Constitution, Preventing loss trust in Legislation and in judicial Systems, Stop "Patent Wars" in Congress, Stop Undermining the Progress of Science and useful Arts, Stop mentally and materially inventors abusing.

...Stop USPTO activities, subjected to the policy direction of the Secretary of Commerce, which take advantage of ignorant, often desperate al inventors with promises of riches for their ideas and which in government trust, until he gradually realized that inventor pay lots for very little or for nothing at all, because it risks undermining our entire system, which was established under Art. I, Sec. 8.

...Stop Legalizing patent infringement or Take Away Securing to inventor's right; or confiscates Intellectual property; and Keeping substantial Fees by Ordinary PTO Officer without court Intervention by Inventor' s prose acting.

.. Stop Legalizing infringement or confiscation Property, under differed name, such "Patent Expire for not timely paid patents maintenance fee", abounded, etc.", by using certain types approval activities, such " Legislation PATENT WARS", which must be considered Inherently Anti-Inventive and Injurious to the public.

...Stop Imposing increasing substantial upfront none refundable fees of thousand dollars under different named charges, such "Patents Maintenance Fees" with designed trap future schedule paid, surcharges, penalties, late payments, different named petitions fees, patent reinstatement fees, etc.

...Stop Imposing "Unavoidable Timely paid "proving standard which Impossible satisfy and requires information which Unconstitutional for multiple reasons, and violates Paperwork Reduction Act, Privacy Act , IRS Code, Administrative Procedure Act , etc , and common federal Laws.

CONCLUSION

The petition for a writ of certiorari should be granted.

Date: November 24, 2006

Respectfully submitted,

1236 49th Street,
Brooklyn, New York
Tel.: 718-435-1107

GERSH KORSINSKY,

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record.

United States Court of Appeals for the Federal Circuit

2006-1225

GERSH KORSINSKY,

Plaintiff-Appellant,

v.

MICROSOFT CORPORATION,

Defendant-Appellee.

DECIDED: August 16, 2006

Before NEWMAN, MAYER, and RADER, Circuit Judges. NEWMAN, Circuit Judge.

Gersh Korsinsky appeals the decision of the United States District Court for the Eastern District of New York granting summary judgment of non-infringement in favor of *Microsoft Corporation.*[1] We affirm.

1 Korsinsky v. Microsoft Corporation, No. 04CF2695, 2005 WL 1123769 (E.D.N.Y. Mar. 31, 2005).

APPENDIX A

BEST AVAILABLE COPY

BACKGROUND

On April 5, 1998 the United States Patent and Trademark Office ("PTO") issued U.S. Patent No. 4,736,447 to Mr. Korsinsky. The patent expired on April 7, 1992 because Mr. Korsinsky did not pay the required 3.5 year maintenance fee. On April 28, 2004 Mr. Korsinsky filed a petition requesting reinstatement of the patent on the ground that he had never received the maintenance fee reminder. The PTO denied the petition on May 17, 2004 and informed him that he could petition for reconsideration within two months. Mr. Korsinsky submitted a request for reconsideration on September 8, 2004, this time arguing that he failed to pay the fee because his wife would not allow him to do so. The PTO requested further support, and Mr. Korsinsky responded by letter on October 26, 2004.

On June 29, 2004 Mr. Korsinsky filed an action against Microsoft alleging infringement of the '447 patent. Rather than answer the complaint, Microsoft moved to dismiss the action for failure to state a claim, stating that Mr. Korsinsky had no infringement claim against Microsoft because his patent had expired on April 7, 1992, see 35 U.S.C. §271 (a) ("whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent thereof, infringes the patent") (emphasis added). Because Microsoft relied on materials beyond the pleadings, the court treated the motion as one for summary judgment under Rule 56 of the Federal Rules of Civil Procedure, in accordance with Rule 12(b) ("If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted,

matters outside the pleading *are* presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56"). On January 27, 2005 the court notified the parties of the conversion and instructed them to submit any additional relevant materials. Mr. Korsinsky submitted affidavits and other materials in support of his position.

On March 31, 2005 the district court granted summary judgment of noninfringement in favor of Microsoft. The court acknowledged that Mr. Korsinsky's *pro se* papers must be read liberally, but held that it was clear that Mr. Korsinsky had no infringement claim against Microsoft, because the patent had expired twelve years earlier and any claim Korsinsky might have had for damages prior to the expiration date would be barred by 35 U.S.C. §286 ("Except as otherwise provided by law, no recovery shall be had for any infringement committed more than six years prior to the filing of the complaint or counterclaim for infringement in the action"). On April 20, 2005 Mr. Korsinsky moved for relief from the judgment pursuant to Rule 60(b). The court denied the motion on May 11, 2005. Mr. Korsinsky then filed an appeal with the Second Circuit, which transferred the appeal to the Federal Circuit.

DISCUSSION

Mr. Korsinsky argues that the district court failed to consider questions regarding the constitutionality of the patent maintenance fee statute and the statute of limitations, as well as his rights under Article I §8 of the Constitution and the Fifth amendment to the Constitution. Microsoft replies

that the district court properly granted summary judgment, that Mr. Korsinsky did not raise these constitutional issues before the district court, and that they are not appropriately raised in an action against Microsoft, a private entity. Microsoft also points out that Mr. Korsinsky is litigating these issues in a separate action directly challenging the Director's subsequent denial of reinstatement.

See Korsinsky v. Godici, 2005 WL 2312886 (S.D.N.Y. Sept. 22, 2005).

We agree that the district court did not err in granting summary judgment of noninfringement. Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Johnston v. I VAC Corp., 885 F.2d 1574, 1576-77 (Fed. Cir. 1989). The district court properly considered the undisputed facts in this case, including the expiration date of the '44/ patent (April 7, 1992), the date of Mr. Korsinsky's complaint (June 29, 2004) and the fact that damages prior to the expiration date of the '447 patent would be barred by 35 U.S.C. §286.

Neither of the parties discusses whether the district court should have stayed the case pending the resolution of the PTO proceedings. The district court acknowledged Mr. Korsinsky's efforts to reinstate the expired patent, but found "no indication in the record that the PTO has reached any decision on [his] delayed request for reconsideration." Korsinky, 2005 WL 1123769, at *1. The district courts have discretion to stay an action pending PTO proceedings. See Medichem, S.A. v. Rolabo, S.L., 353 F.3d 928, 936 (Fed. Cir. 2003) (a stay pending proceedings in the PTO is "an option within the district court's discretion"). We discern no abuse

of discretion in the court's consideration of the parallel proceedings.

We have considered all of Mr. Korsinsky's arguments, and conclude that the appealed judgment must be affirmed.

2006-1225

ISSUED AS A MANDATE:

United States Court of Appeals for the Federal Circuit

2006-1225

GERSH KORSINSKY, Plaintiff-Appellant,

v.

MICROSOFT CORPORATION, Defendant-Appellee.

JUDGMENT

ON APPEAL from the United States District Court for the Eastern District of New York In CASE NO(S). 04-CV-2695

This CAUSE having been heard and considered, it is ORDERED and ADJUDGED: AFFIRMED

ENTERED BY ORDER OF THE COURT

DATED: AUG 16 2006 FILED

By: [illegible], Clerk of Court

THE FEDERAL CIRCUIT

SEP 18 2006

JAN HORBALY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Gersh Korsinsky,

Plaintiff,

-against-

Microsoft Corporation,

Defendant

04-CV-2G95 (SLT) (LB)

MEMORANDUM AND ORDER

TOWNES, U,S.DJ.

Defendant Microsoft Corporation moves for summary judgment on Plaintiffs patent infringement claim. Upon consideration of the written submissions of each party, and for the reasons set forth below, Defendant's motion is GRANTED.

BACKGROUND

Gersh Korsinsky ("Plaintiff') brings this patent infringement action against Microsoft Corp. ("Defendant" or "Microsoft"), alleging that Defendant infringed U.S. Patent No. 4,736,447 ("Patent"). This Patent, entitled "Video Computer," was issued to Plaintiff on April 5,1988. "When Plaintiff failed to pay the required 3.5 year maintenance fee, the Patent expired on April 7, 1992, On April 29,2004, Plaintiff filed a petition with the U.S. Patent and Trademark Office ("PTO") requesting reinstatement of the Patent on the basis that Plaintiff had not received the

maintenance fee reminder. The petition was not accompanied by the 7.5 year or 11.5 year required maintenance fees, which had never been paid. The PTO denied the petition on May 17, 2004 and informed Plaintiff that he had the option to either petition for reconsideration within two months or to request a refund of the maintenance fee and surcharge that he had submitted along with his petition. On May 28,2004, Plaintiff sent a letter requesting a refund of the maintenance fee and surcharge. On September 8,2004, Plaintiff filed a request for reconsideration, this time alleging that he had failed to pay the maintenance fees because his wife would not allow him to do so. The PTQ sent Plaintiff a request for more information in support of his allegation that nonpayment of the required maintenance fees was wholly unavoidable due to his wife's control over the couple's finances or due to an inability to pay. Plaintiff sent a letter to the PTO on October 26,2004 in further support of his claims. There is no indication in the record that the PTO has reached *my* decision on Plaintiffs delayed request for reconsideration. Plaintiff brought this action against Defendant on June 29,2004. On August 30,2004, Defendant moved to dismiss the action pursuant to Rule I2(b)(6) in lieu of answering the complaint. Due to the fact that the Defendant submitted materials beyond the pleadings in Connection with its motion to dismiss, the Court decided to treat the motion as one for summary judgment under Rule 56, as provided in Rule 12(b). On January 27,2005, the Court notified the parties of the conversion and instructed the parties to submit any additional materials relevant to the summary judgment motion within ten days, In response, Plaintiff submitted affidavits and other materials in support of his position.

DISCUSSION

Summary judgment is appropriate where "there is no genuine issue as to any material fact" such that the moving party is entitled to "judgment as a matter of law." Fed. R. Civ. P. 56(c). "A fact is 'material' for these purposes if it 'might affect the outcome of the suit under the governing law."[1] *Hotii v. Rockefeller & Co.*, 258 F.3d 62,69 (2d Or. 2001) *{quoting Anderson* v. *liberty Lobby, Ina,* 477 US. 242,248 (1986)). To be "genuine," an issue of fact must be supported by evidence "such that a reasonable jury could return a verdict for the nonmoving party," *Holt*, 258 F.3d at 69, and "a court must resolve all ambiguities and draw all reasonable inferences against the moving party." *Alston v. New York City Transit Authority,* 2003 U.S. Dist. LEXIS 21741, at *4 (S.DJST.Y. Dec. 3,2003) *(quoting Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). Because Plaintiff is proceeding *pro se,* the Court must "read [Plaintiff's] supporting papers liberally, and....interpret them to raise the strongest arguments that they suggest." *Burgos v. Hopkins,* 14 F.3d 787,790 (2d Cir. 1994); *Von Grabe v, Ziff Davis Publ'g Co,,* 1995 U.S. Dist LEXIS 17335, at *11 (S.D.N.Y. Nov. 20,1995). Nonetheless, it is clear that Plaintiff has no claim against Microsoft for patent infringement. 35 U.S.C. § 271 (a) states that "whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of, th^ patent {hereof, infringes the patent." (emphasis added). The statutory language leaves no doubt that the term of the patent determines the scope of potential infringement - i.e., one cannot infringe an expired patent. *See Golan v. Pingel Enter.,* 310 F.3d 1360,1371 (Fed. Cir. 2002) (noting that an expired patent is an unenforceable one); *DePtdma* v. *Nike,*

Inc., 341F, Supp. 2d 178,181 (N.D.N.Y. 2004) ("Now that the [patent] has expired...there is no present activity on the part of defendants which could constitute infringement."); *P.C Films Corp. v. Turner Entm't Co.*, 954 F. Supp. 711,715 (S.D.N.Y. 1997) ("[A]ny attempted reservation or continuation,..of the patent monopoly, after the patent expires...runs counter to the policy and purpose of the patent laws.") (quoting *Scott Paper Co. v. Marcalus Mfg. Co.*, 326 U.S. 249, 256 (1945)); *Milligan v. Worldwide Tuppenvare*, 972 F. Supp. 15S, 161 n.l (W.D.N.Y. 1996) (holding in a case where

the patent had expired that "plaintiff has no patent rights whatsoever with respect to the work that is the subject of this lawsuit"); *Mobil Oil Corp. v. W. R. Grace & Co.* ,367 F. Supp. 207, 250 (D. Conn. 1973) (noting that "an expired patent cannot be infringed").

The May 17,2004 decision by the PTO states explicitly that "the patent expired April 7 1992" due to Plaintiff's non-payment of the 3.5 year maintenance fee. A paicnL automatically expires unless the patent holder pays maintenance fees at 3,5,7,5, and 11.5 years from the date of issue, as prescribed by statute. *See* 35 U.S.C. § 41(b) ("Unless payment of the applicable maintenance fee is received in the Patent and Trademark Office on or before the date the fee is due or within a grace period of 6 months thereafter, the patent will expire as of the end of such grace period."); *UleadSys., Inc.* v. *Lex Computer & Mgmt. Corp.*, 351 R3d' 1139,1142 (Fed. Or. 2003) (noting that Congress, through the passage of 35 U.S.C. § 41 * required "the payment of periodic maintenance fees to maintain the life of a patent"); *Lemelson Med., Educ. & Research Found,* v. *Mel Corp.*, 2002 U.S. Dist. LEXIS 23175, at *<5 (D. Ariz. July 30, 2002)

("After a patent issues, maintenance fees must be paid or the patent expires."). Plaintiff argues that the PTO is currently reconsidering his request for reinstatement of the Patent Nevertheless, the Patent has not boon reinstated and Plaintiff b,a$ no - actionable claim for damages since the date of expiration.

Plaintiff .argues that, even if the Patent expired in 1992, he has a claim for damages for any infringement that occurred while the Patent was still valid. While Plaintiff is correct in the abstract, the six-year statute of limitations applicable to patent infringement actions has long since expired and Plaintiffs claim is now time-baited. *See* 35 U.S.C. § 286 ("[N]o recovery shall be had for any infringement committed more than six years prior to the filing of the complaint or counterclaim for infringement in the action."); *Wanton* v. *FeOders Corp.*, 145 F.3d

1461,1462 (Fed. Cir. I99S) (holding that a patent holder "could only sue for damages from six years prior to filing suit.-.until the expiration of the patent").

CONCLUSION

As Plaintiff has failed to present a triable issue of fact on his patent infringemetit claim, Defendant's motion for summary judgment is granted and Plaintiffs claim is dismissed.

SO ORDERED.

Sandra

SANDRA L.TOWNES " ˅ UNITED STATES DISTRICT JUDGE

Dated: Brooklyn, New York March jgL, 2005